

## **REMARKS**

Applicants respectfully request reconsideration and withdrawal of the outstanding Office Action rejections in view of the following remarks.

### Interview Summary

During an interview with Examiner Mabry on October 21, 2009, the Examiner informed applicants that a declaration comparing compound 41 cited as the closest prior art in Strunk (U.S. 5,169,430) with the compound of the claimed invention submitted to overcome the outstanding rejections under 35 U.S.C. § 103(a) would be fully considered at this stage of prosecution. Accordingly, the required experiments were performed and are detailed in the signed declaration of Dr. Anja Simon filed herewith.

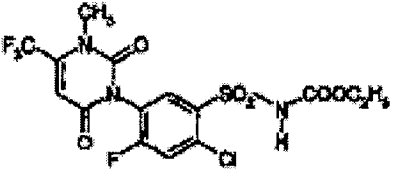
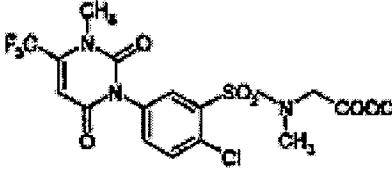
### Response to Rejections under 35 U.S.C. § 103

Claims 16-17 and 22-23 were rejected under 35 U.S.C. § 103(a) as being obvious over Strunk (U.S. 5,169,430). The Examiner asserts that compound 41 remains the closest prior art and an artisan of ordinary skill in the art would be motivated to extend the N-Y- position by one –CH<sub>2</sub> group for a herbicidal use for controlling weeds as disclosed by Strunk. The Examiner asserts that the Applicants have not shown a comparison of the presently claimed compound to the closest prior art, i.e. compound 41 of Strunk.

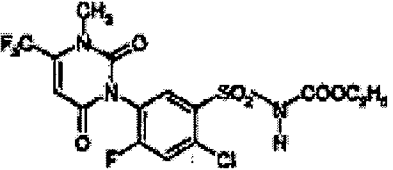
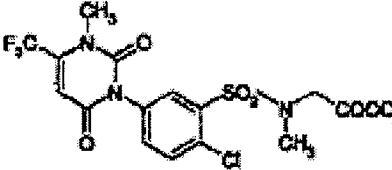
Applicants submit herewith a declaration, signed by Dr. Anja Simon, containing a side-by-side comparison of the claimed compound (namely compound 3.19 shown on page 116 of the application as filed) with compound 41 of Strunk, which was cited as the closest prior art.

In the experiment detailed in the declaration of Dr. Simon, the herbicidal action of the inventive compound on various plants is shown in Tables 1 and 2. Dr. Simon explains that the test data clearly indicate that the use of the presently claimed compound is unexpectedly superior to compound 41 of Strunk with regard to herbicidal activity.

**Tab. 1** Comparison of the herbicidal activity of compound 3.19 of the present invention and compound 41 known from Strunk et al. (US 5,189,430) at an application rate of 0.016 kg/ha pre emergence (greenhouse)

compound	compound 3.19	compound 41 (Strunk et al.)
		
application rate (kg/ha)	0.016	0.016
unwanted plant	damages [%]	
BIDPI	100	0
CHEAL	100	15
POLPE	100	85
GALAP	85	25
COMBE	100	55

**Tab. 2** Comparison of the herbicidal activity of compound 3.19 of the present invention and compound 41 known from Strunk et al. (US 5,189,430) at an application rate of 0.016 kg/ha post emergence (greenhouse)

compound	compound 3.19	compound 41 (Strunk et al.)
		
application rate (kg/ha)	0.016	0.016
unwanted plant	damages [%]	
ECHCG	100	80
SETFA	100	20

Dr. Simon explains that the test data clearly demonstrate that in a head-to-head comparison of the presently claimed compound with the compound cited as the closest prior art by the Examiner, i.e. compound 41 of Strunk, the presently claimed compounds

are exceedingly superior. Clearly, the presently claimed compounds have significantly dissimilar and unexpected properties in practice. Thus, the presently claimed compounds would not have been expected based on the teachings of the art of record and thus the claims are not rendered obvious by the art cited in the Office Action. Applicants therefore respectfully request reconsideration and withdrawal of the rejections under 35 U.S.C. § 103(a).

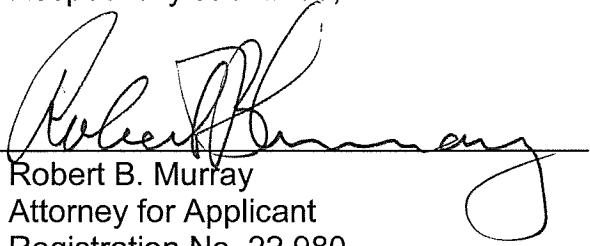
### Conclusions

In view of the above remarks and side-by-side comparison with the closest prior art, Applicants believe that the rejections set forth in the September 24, 2009 Office Action have been fully overcome and that the present claims fully satisfy the patent statutes. Applicants therefore believe that the application is in condition for allowance.

The Examiner is invited to telephone the undersigned if it is deemed to expedite allowance of the application.

Respectfully submitted,

By



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Enclosure: Declaration of Dr. Simon  
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